

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7514 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
 2. To be referred to the Reporter or not? Yes
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No

SANGITABEN ATULKUMAR PATEL WIFE OF DETTENU ATULKUMAR

Versus

DISTRICT MAGISTRATE

Appearance:

MR NM KAPADIA for Petitioner

Mr.N.D.Gohil, A.G.P. for Respondent No. 1, 3, 4

Mr.B.T.Rao, for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 26/02/99

J U D G E M E N T

1. The petitioner, through this writ petition under Article 226 of the Constitution of India, has challenged the order dated 25.8.1998 passed by the District Magistrate, Sabar Kantha at Himatnagar, under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, (for short "The Act") and has prayed for quashing the detention order passed against the husband of the petitioner and

immediate release of detenu from illegal detention. The petitioner is the wife of the detenu.

2. From the grounds of detention it appears that wholesale licence in crude, kerosene was issued in the name of the father in law of the petitioner, viz. Amrutbhai Kodarbhai Patel, who is running his business as proprietor of Atul Trading Co. The other licence is held in the name of the husband of the petitioner, who is running similar business as proprietor of Parth Petroleum Modasa. He too is dealing in crude, kerosene. It was alleged that the detenu was looking after the management and administration of Atul Trading Company and was also looking after the management and administration of Parth Petroleum as Proprietor. On 29.5.1998 watch was kept over the activities of the detenu. It was found that 10 barrels of kerosene were loaded from the company of the detenu as well as from Ramesh Trading Co. 8 barrels of kerosene were loaded from Atul Trading Co. and 2 barrels of kerosene were loaded from Ramesh Trading Co. in a tempo and were to be delivered in village Varthu. The consignment was meant for direct sale of kerosene which was meant for public distribution to ration card holder at subsidised rates. Statements of the driver of the tempo and that of the detenu and one Shri D.N. Chamar was taken by the Inspecting Staff. It was found that the kerosene in 10 barrels was being transported for direct sale for earning profit by indulging in black marketing activities. This activity was prejudicial for maintenance of smooth supply of essential commodity. Alternative remedies were taken into consideration which were found insufficient hence the impugned order of detention was passed.

3. The impugned order of detention has been challenged on many grounds.

4. The first ground is that action was taken against the detenu on solitary incident hence the detention order is bad in law. This contention has absolutely no force. It is not a case where dangerous person was detained for creating activities prejudicial for maintenance of public order nor bootlegger was detained for indulging in similar activities prejudicial for maintenance of public order. In cases where supply of essential commodity is obstructed even single incident will be enough for passing order of detention under the Prevention of Black Marketing Act. Repeated activity for passing such order is not a condition precedent hence I do not find any merit in this contention.

5. Learned A.G.P., however, contended that in the first place the order for preventive detention on solitary incident in such cases is no bar and secondly he contended that it is not a case of preventive detention on solitary incident, rather there were past antecedents of the detenu who was involved in such black marketing activities. In support of his contention he has referred to the counter Affidavit of Shri V.M.Vora, Detaining Authority, which was sworn on 7.12.1998. In Para : 7 of this Counter Affidavit four cases were reported against the detenu. The first three cases mentioned in this para relate to Atul Trading Co. which is proprietorship concern of the father of the detenu, the 4th case related to the detenu who is proprietor of Parth Petroleum. However, these four cases were not disclosed in the grounds of detention and for the first time in the counter Affidavit the detaining Authority came with past history. It is, therefore, clear that when the detention order was passed the mind of the Detaining Authority was certainly influenced by the fact that on three earlier occasions the detenu committed similar black marketing activities in relation to the concern run by his father and managed by him and on one occasion he indulged in similar black marketing activity in relation to concern owned by him. These materials should have been furnished to the detenu and since this was not done the right of the detenu to make effective representation was affected. The Apex Court in Bhut Nath v/s. State of West Bengal reported in A.I.R. 1974 SC 806 on this point observed that Article 22(5) of the Constitution of India vests a real not illusory right that communication of the facts is the cornerstone of the right of representation and orders based on uncommunicated materials are unfair and illegal. In this case also certain criminal activities reported and unreported were also taken into consideration by the detaining Authority over and above the instances communicated to the detenu. On these facts the Apex Court found that placing reliance upon uncommunicated reported or unreported incidents certainly violated fundamental right of the detenu under Article 22(5) of the Constitution of India. Thus, on this ground the impugned detention order is rendered invalid.

6. Another contention has been that alternative remedies which are lesser drastic were not considered by the detaining Authority which has rendered his subjective satisfaction non-existent. It was specifically pointed out that the alternative remedy of cancellation of licence was not considered by the detaining Authority. From the grounds of detention it appears that the detaining Authority had considered the fact of suspension

of licence of the two concerns for a period of 90 days with effect from 1.7.1998. The detaining Authority further considered the possibility of launching criminal prosecution under the Essential Commodities Act, under Section 12(AA) and found the same to be ineffective. This stand was taken in the counter Affidavit dated 7.10.1998 of the detaining Authority. But neither in the grounds of detention nor in this counter affidavit as well as in the additional counter Affidavit the detaining Authority considered the other alternative remedy, viz. cancellation of licence. Since there is no mention in the grounds of detention as well as in the counter affidavits that alternative remedy of cancellation of licence was taken into account it can be said that this alternative remedy was not at all considered by the detaining Authority before passing the impugned order. If more than one alternative remedies were available the detaining Authority was obliged to consider all those remedies and give reasons why those remedies were ineffective and preventive detention was the only effective remedy. Since one of the alternative remedies, viz. cancellation of licence was not considered by the detaining Authority, his subjective satisfaction stands vitiated, as a result of which the impugned order of detention cannot be sustained.

7. The next contention has been that the representation sent by the wife of the detenu (petitioner herein) on 1.9.1998 was not considered by the State Government. It appears from the record that two representations dated 1.9.1998 were sent by the wife of the detenu. In one of the representations copies of certain documents were demanded and in the other representation of the same date request was to forward the copies of these representations to the concerned officers immediately who are competent to release the husband of the petitioner. The grounds for revocation were taken in this representation. One representation demanding copies of document was suitably dealt with and copies were supplied. However, the second representation dated 1.9.1998 was not at all considered by the State Government nor it was rejected. From the counter Affidavit of the detaining Authority dated 24.12.1998 it is clear that the representation dated 1.9.1998 was received in the office of the detaining Authority on 3.9.1998. It was sent to the concerned department on 4.9.1998. It was inwarded on 8.9.1998. 6.9.98 was Sunday. Thereafter a note was put up by the Mamlatdar, Supply Department on 10.9.1998. The note was signed by the District Supply Officer on 11.9.1998 and was sent to the office of the Detaining Authority. The Detaining

Authority sent back the file for preparation of another note in detail to the supply department. 12th and 13th September 1998 were holidays. Note in detail was put up before the District Magistrate on 14.9.1998. The District Magistrate further wanted certain discussion on certain points. The matter was discussed and a note was put up on 19.9.1998. It was signed by the District Supply Officer on 21.9.1998. The Note was signed by the District Magistrate on 22.9.1998 meaning thereby that it was rejected on 22.9.1998 and letter of rejection was sent on the same date. Papers were forwarded along with rejection order to the State Government. From the above narration of facts it is clear that there was hardly any necessity for the District Magistrate to go on discussing the matter again and again at least twice right from 3.9.98 to 21.9.98. This delay can not be said to have been satisfactorily explained. Moreover the detaining Authority lost sight of the fact that he had no jurisdiction to reject the representation of the petitioner after the detention order dated 25.8.1998 was approved by the State Government on 5.9.1998. The detaining Authority could have rejected the representation on or before 4.9.1998. Consequently this rejection order is without jurisdiction and is consequently illegal.

8. So far as the State Government is concerned the counter Affidavit of Shri P.R.Shukla, Deputy Secretary to the Government of Gujarat indicates that the State Government did not consider the representation dated 1.9.1998 at all. From this counter Affidavit it appears that representation dated 1.9.1998 was signed by the detenu on 5.9.1998 and was handed over to the Jailor by the wife of the detenu. The jailor sent the representation on 5.9.1998 to the Chief Secretary. The representation was moving from one table to another on 7.9.1998 and 8.9.1998. On 8.9.1998 it was found by the State Government that as the points in the said representation pertained to the detaining Authority it was sent to the District Magistrate, vide letter dated 8.9.1998 for necessary action. Beyond this in none of the counter affidavits from the State of Gujarat it is deposed that the representation dated 1.9.1998 sent by the petitioner was ever considered and rejected by the State Government. Non-consideration of representation by the petitioner who is none-else than the wife of the detenu has rendered the detention order against the detenu illegal. This is another ground for quashing the detention order.

9. So far as Central Government is concerned it has

to be blamed for non-consideration of representation expeditiously. From the counter Affidavit of Shri A.L. Makhijani, Under Secretary in the Department of Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi, it is clear that the representation dated 1/5.9.1998 was received on 8.9.1998. The delay between these two dates is not to be explained by the Central Government. A telegram was sent on 8.9.1998 calling for parawise comments and a reminder was sent on 18.9.1998. English version of the representation was also demanded which was received on 21.9.1998. Parawise comments were received on 28.9.1998. Still the representation was rejected on 5.10.1998. There is no explanation of delay between 29.9.1998 to 4.10.98. In the absence of explanation of delay it can be said that the representation of the detenu was not expeditiously disposed of by the Central Government which is another ground for rendering the detention order illegal.

10. There is no merit in the attack that complete copy of licensing order of 1981 was not supplied to the detenu. Para : 12 of the Counter Affidavit dated 7.12.1998 of the detaining Authority is complete answer to this attack wherein he has deposed that complete copy of the licensing order of 1981 was supplied to the detenu at Page Nos.115 to 130.

11. There is again no merit in the contention that the report of the State Government was not considered by the Central Government. It was not necessary to depose in the counter Affidavit filed on behalf of the Central Government that the report of the State Government was considered. Receipt of report from State Government, grounds of detention, parawise comments and representation of the detenu is admitted by the Central Government. It is not a case where these materials were not considered by the Central Government. Unless these materials were considered the representation of the detenu could not be rejected on 5.10.1998. As such it is implied that the report of the State Government was considered by the Central Government. There is no obligation under Section 3(4) of the Act to consider the report of the State Government immediately without considering the representation, grounds of detention, parawise comments and other material on record. The case of M/s. Shakarkhanu Kamruddin Sattani v/s. The state of Maharashtra, reported in 1985 Criminal Law Reports, Maharashtra, 237, is distinguishable on facts and has no application to the facts of the case before me.

12. In view of the aforesaid discussions on the

points on which the detention order has been rendered illegal there is no option but to quash the detention order. The writ petition has therefore to be allowed and is hereby allowed. The impugned order of detention is hereby quashed. The detenu shall be released from custody forthwith unless wanted in some other case.

sd/-

Date : February 26, 1999 (D. C. Srivastava, J.)

sas

